

(d) Tests shall be accomplished through breath analysis and analysis of urine samples. The conduct of breath alcohol testing and urine drug testing under this subpart is governed by subpart H of this part and part 40 of subtitle A of this title.

(e) As used in subpart H with respect to a test required under this subpart, the term *covered employee* includes an applicant for pre-employment testing only. In the case of an applicant who declines to be tested and withdraws the application for employment, no record shall be maintained of the declination.

(f) Notwithstanding any other provisions of this subpart, all provisions and requirements in this section pertaining to preemployment testing for alcohol are suspended as of May 10, 1995.

[59 FR 60564, Nov. 25, 1994, as amended at 60 FR 24766, May 10, 1995]

§ 219.503 Notification; records.

The railroad shall provide for medical review of the urine drug test results as provided in subpart H of this part. The railroad shall notify the applicant of the results of the urine and breath tests in the same manner as provided for employees in subpart H. Records shall be maintained confidentially and shall be retained in the same manner as required under subpart J for employee test records, except that such records need not reflect the identity of an applicant whose application for employment in covered service was denied.

[59 FR 7462, Feb. 15, 1994]

§ 219.505 Refusals.

An applicant who has refused to submit to pre-employment testing under this section shall not be employed in covered service based upon the application and examination with respect to which such refusal was made. This section does not create any right on the part of the applicant to have a subsequent application considered; nor does it restrict the discretion of the railroad to entertain a subsequent application for employment from the same person.

[54 FR 53259, Dec. 27, 1989, as amended at 59 FR 7462, Feb. 15, 1994]

Subpart G—Random Alcohol and Drug Testing Programs

§ 219.601 Railroad random drug testing programs.

(a) *Submission.* Each railroad shall submit for FRA approval a random testing program meeting the requirements of this subpart. A Class I railroad (including the National Railroad Passenger Corporation) or a railroad providing commuter passenger service shall submit such a program not later than October 2, 1989. A Class II railroad shall submit such a program not later than April 2, 1990. A Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall submit such a program not later than July 2, 1990. A railroad commencing operations after the pertinent date specified in this paragraph shall submit such a program not later than 30 days prior to such commencement. The program shall be submitted to the Associate Administrator for Safety, FRA, for review and approval by the Administrator. If, after approval, a railroad desires to amend the random testing program implemented under this subpart, the railroad shall file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program shall not be implemented prior to approval.

(b) *Form of programs.* Random testing programs submitted by or on behalf of each railroad under this subpart shall meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents shall conform to such criteria in implementing the program:

(1) Selection of covered employees for testing shall be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, *i.e.*, no employee may be selected as the result of the exercise of discretion by the railroad. The selection method shall be capable of